IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 970 of 2006

MOHD.ZAFFAR & ANR.
V/S
A.D.J.(FAST TRACK)NO.4 & ORS.

Mr. KK SHAH, for the appellant / petitioner

Mr. JAGDISH VYAS, for the respondent

Date of Order : 3.1.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

By this petition the petitioner seeks to challenge the impugned judgment, Annex.1, whereby five consolidated claim petitions have been decreed, and has also challenged the interim order dated 5.12.2005. The claim petitions had been filed under Section 166 and 140 of the Motor Vehicles Act for award of compensation. Vide order dated 27.2.2006 while issuing show cause notice, it was held by this Court that the contention of the learned counsel for the petitioner is not correct either on fact or on law, that the petition has not been submitted against the award but against the order dated 5.12.2005, rather it seeks to challenge the award as well.

In my view, when the interim order dated 5.12.2005 has culminated into final award, by virtue of Section 104 CPC, it is open to the petitioner to assail that order also while assailing the impugned award, by taking appropriate ground in appeal. May be that as noticed in the order dated 27.2.2006, the learned trial Court proceeded under a misconception about the petitioner being exparte, as the exparte proceedings against the petitioner had been set aside vide order dated 10.3.2005, but then, in my view, that itself cannot entitle the petitioner to bypass the

remedy of regular appeal, and therefore, I am not inclined to admit the present petition, so as to interfere in my 226 jurisdiction, in the impugned award against which the petitioner has a remedy of regular appeal. The writ petition is, therefore, dismissed summarily.

It was contended by learned counsel for the petitioner that the limitation for appeal by now has expired. In my view, it is required to be noticed that the present writ petition was filed on 7.2.2006 itself and it is always open to the petitioner to seek appropriate remedy in the appellate forum for exclusion of the time spent in prosecuting this writ petition. In the circumstances of the case, it is also directed that the original certified copy of the award be returned to the petitioner or his counsel, so as to enable him to file appeal. It is also directed that the amount deposited by the petitioner in pursuance of the order dated 27.2.2006, shall be taken to be sufficient deposit, as required by Section 173 of the Motor Vehicles Act for filing appeal.

( N P GUPTA ),J.

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